

February 5, 2006

National Environmental Policy Act (NEPA) Draft Report Comments
c/o NEPA Task Force
Committee on Resources, United States House of Representatives
1324 Longworth House Office Building
Independence and New Jersey avenues SE
Washington, DC 20515

**Re: Request for Comments
NEPA Task Forces' Initial Findings and Draft Recommendations**

Dear NEPA Task Force:

The Pacific Northwest Ski Areas Association (PNSAA) submits these comments in response to the NEPA Task Forces' December 21, 2005 initial findings and draft recommendations. The PNSAA is a non-profit trade association, which represents the interests of Pacific Northwest ski and snowboard facilities. This region's facilities – the vast majority of which rely upon National Forest System (NFS) lands for their operations – collectively host more than 4.5 million forest visits each winter. I submit the following comments on behalf of the PNSAA Board of Directors and the PNSAA's member ski areas.

The Association has had a great deal of experience with Pacific Northwest Region 6 (i.e., USDA Forest Service) ski area NEPA. The comments below are based on recent NEPA exercises in the Pacific Northwest Region. The following comments address each recommendation, and provide one additional recommendation.

Group 1 (Addressing Delays in the Process)

The PNSAA supports recommendations 1.1, 1.2, 1.3, and 1.4 (i.e., R.1.1 – R.1.4), especially mandatory timelines for the completion of NEPA documents (i.e., R.1.2). Assigning CEQ with extension authority is appropriate; CEQ should be asked to develop criteria for extensions to ensure the practice is used only in extraordinary circumstances. The Association strongly supports R.1.3 – a NEPA amendment to create unambiguous criteria for the use of categorical exclusions (CEs), environmental assessments (EAs), and environmental impact statements (EISs). Many of the PNSAA ski area members have encountered a very conservative practice of NEPA, essentially a practice of NEPA that attempts to 'bullet proof' NEPA analysis to protect them from appeal later in the process.

In theory, activities that are similar in nature to previously approved activities, or that take place in the same footprint, or corridor, should qualify for the issuance of a CE. For ski areas in the Pacific Northwest, CEs are rarely granted. And in the rare instances where CEs are issued, the process has become unnecessarily complex and costly. As an example, Willamette Pass Ski Area (in Oregon) approached the USDA Forest Service with a proposal to construct a gondola lift to carry guests over a public highway – safely connecting the parking facility of the ski area with the lodge and lifts and trails on the other side of State Route 58. The area that is to be impacted by this project is previously disturbed and not suitable habitat for any species (i.e., a two-lane

highway, surface parking facilities, and a day lodge and surrounding milling areas). The primary purpose of the gondola project is to mitigate the safety concern related to Willamette Pass patrons having to cross a highway in ski boots while carrying skis, poles, backpacks, etc. Ultimately, a CE was issued for the gondola lift. Unfortunately, it took more than three years and numerous environmental surveys for the CE to be issued, costing ski area management three years of delay and more than \$30,000.00.

The USDA Forest Service is requiring EISs in situations where an EA should suffice. The federal government uses the EIS process to attempt to inoculate itself from legal challenges. While it is agreed that in limited circumstances an EIS does help reduce the likelihood that opposition groups will challenge certain tenants of a project, the costs associated with an EIS are much greater than the costs associated with an EA – both for the federal government and the ski area operator. In short, the costs do not justify the practice.

The EIS required of Anthony Lakes Mountain Resort (ALMR) is a textbook example of this NEPA tentativeness. The handful of projects that constitute the ALMR Master Development Plan (MDP) should have triggered no more than an EA. By requiring an EIS, the NEPA exercise for ALMR was significantly more costly, and resulted in delays for critically important projects like sewage treatment infrastructure. The NEPA process consumed four summer construction seasons. The elevated NEPA costs were absorbed by the unit of the USDA Forest Service that administers ALMR's special use permit, and by the owners of ALMR. The decision to require an EIS was a disservice to ALMR, and the federal land managing agency. The overall cost of the NEPA process – both the overall commitment of financial resources and the opportunity costs – has compromised ALMR's ability to implement programs and facility improvements. This has a direct affect on the recreational experience afforded members of the public, and the ability for ALMR to sustain operations in a very competitive marketplace.

The Association strongly supports R.1.4 – amending NEPA to address supplemental NEPA documents. The federal government pursues supplemental NEPA documents with too great of frequency. The result is again delay in the NEPA process and an increase in NEPA costs. Today, NEPA processes can take a decade to complete, which means the original analysis often becomes stale even before the issuance of a NEPA record of decision. Because the initial NEPA process has become so lengthy, SEISs are now sometimes necessary. The issue of staleness is material evidence that current NEPA practice is grossly out of line with the original intent of the Act.

In many instances, the federal government is requiring the preparation of SEISs in situations where they are not legally required to do so. A related trend is the requirement of a second (or even third) EIS for the same project. Mt. Ashland Ski Area (in Oregon) and White Pass Ski Area (in Washington) have been subject to multiple EISs. At White Pass, multiple EISs have been required in an attempt to avoid challenges to the original NEPA analysis. At Mt. Ashland, multiple EISs have been required because the initial EIS process took so long that the analysis underlying it could no longer be considered current. The result is seemingly endless and expensive NEPA analysis – not the sound decision-making intended by the authors of the Act. At Mt. Ashland, the ongoing NEPA process has been so unpredictable that it has seriously compromised the operator's efforts at strategic business planning, contributing to further erosion of Mt. Ashland's competitive position. (A nearby ski area on fee simple lands has

pursued resort development that has significantly impacted the overall viability of the Mt. Ashland ski facility.

Group 2 (Enhancing Public Participation)

The PNSAA supports R.2.2 and questions the appropriateness of R.2.1. The rationale for R.2.1 has not been established. The definition of the word ‘local’ has not been enumerated. Defining ‘local interests’ would be a significant challenge, and would need to be done on a case-by-case basis. As operators of ski facilities, we seek input from skiers and snowboarders from our local, regional, and national markets. R.2.1 is contrary to many of our industry’s marketing strategies, as well as the Forest Service’s inclination to serve as many different publics as possible. It is difficult to discern how giving weight to local interests would enhance the NEPA process.

The PNSAA strongly supports R.2.2. Codifying page limits could become a powerful constraint to over-worked NEPA analyses. Additionally, we would urge the Task Force to implement page limits on EAs and CEs. As was noted earlier, EAs and CEs have become lengthy exercises. Recent EA exercises have cost more than \$250,000.00 (and taken several years time to complete). EAs should be capped at 75 pages; CEs should be limited to no more than 10 pages.

Group 3 (Better Involvement for State, Local, and Tribal Stakeholders)

The PNSAA supports R.3.1 and R.3.2, particularly R.3.2. Whenever state environmental reviews satisfy the rigors of NEPA, it would inject efficiency into the NEPA process to acknowledge that state environmental reviews are considered the functional equivalent of NEPA. In such cases, it is appropriate to allow the state reviews to satisfy commensurate NEPA requirements.

Group 4 (Addressing Litigation Issues)

The PNSAA supports R.4.2 and needs further clarification on the intention of R.4.1. If R.4.1 would allow the prevailing party to recover attorney’s fees, similar to the practices allowed under the Clean Water Act, the Association would not support the citizen suit provision. The provision to allow for the recovery of attorney’s fees would possibly induce, not reduce, litigation. R.4.2 – the ‘pre-clearing’ of projects through CEQ – should help reduce the chances of unanticipated challenges, which, in turn, should help reduce the costs of the NEPA process.

Group 5 (Clarifying Alternatives Analysis)

The PNSAA strongly supports R.5.1 – an amendment to require that reasonable alternatives in the NEPA analysis be limited to those that are economically and technically feasible. (Currently, significant resources are being expended on alternatives that are not economically, or technically feasible.) The PNSAA also supports R.5.2. The environmental effects of the no-action

alternative should be considered in the NEPA alternative analysis. This will lead to better decision making, particularly for proposals that include issues concerning public safety, habitat enhancements, watershed restoration, etc. The PNSAA does not support R.5.3, particularly in situations where a public applicant is involved. A monitoring program is developed as part of the environmental analysis for each phase of development and is implemented as soon as possible after approval of each phase. In our industry's circumstance, the mitigation requirements of a record of decision require significant input, and resources, from both parties that comprise the 'recreation partnership' – both the ski area operator and the USDA Forest Service. With declines in federal appropriations, and significant workforce uncertainty for the USDA Forest Service, it is more appropriate to keep the mitigation proposals the domain of the federal land manager, rather than making mitigation enforcement the responsibility of the judiciary.

Group 6 (Better Federal Agency Coordination)

The PNSAA strongly supports R.6.1 and R.6.2, as long as improved coordination – in the long run – does nothing to slow the pace of the NEPA process. Often, comment periods are ignored by cooperating agencies, which negatively impacts the overall analysis of public comments. In the case of Mt. Ashland Ski Area, comments provided by cooperating federal agencies – outside the official comment period – have led to extensive, additional analysis, and the USDA Forest Service's decision to require a REVISED draft environmental impact statement.

The basic nature of the NEPA process demands a high level of coordination amongst agencies (USDA Forest Service, US Environmental Protection Agency, US Fish and Wildlife Service, etc.). Poor coordination diminishes the timeliness of the NEPA process, which exacerbates the staleness issue. Extensive coordination is required, but the declines in federal appropriations make agency coordination a very challenging proposition. R.6.1 helps address this issue.

The PNSAA supports R.6.2, which codifies the lead agency status. Consulting agencies must subscribe to project schedules for scoping, comment periods, and other steps in the NEPA process. Current practices undermine the practice of NEPA, causing needless delays and helping to contribute to the skyrocketing costs of NEPA.

Group 7 (Additional Authority for CEQ)

The PNSAA supports R.7.1, but only if this additional layer of authority (i.e., NEPA Ombudsman) is crafted in such a fashion as to inject clarity and simplicity into NEPA processes. The PNSAA believes the lead agency must demonstrate leadership and be more decisive. Consensus should never be substituted for agency leadership; the creation of an ombudsman position might undermine R.6.2 (and the benefits thereof).

Of all the progressive recommendations listed above, the PNSAA reserves its highest opinion for R.7.2. This is critically important to the future of our industry. In some instances, ski area operators are being asked to pursue NEPA analyses that have costs that approach, if not exceed, the fair market value of the ski area. The costs and time delays can be extraordinary and

the uncertainty of the process is preempting investment by the private sector. For these reasons, the PNSAA strongly supports all efforts to pursue NEPA cost containment.

Group 8 (Clarify Meaning of ‘Cumulative Impacts’)

The PNSAA strongly supports R.8.1 and R.8.2. Challenges to cumulative impacts analysis comprise a portion of almost every appeal, or lawsuit, involving ski area-related projects. The meaning of cumulative impacts is ill defined and easily manipulated by self-serving groups that categorically oppose a proposed action. Federal land managers struggle to define the overall scope of a project’s cumulative impacts. Consulting agencies must strive to do a better job of determining the parameters of the cumulative impacts analysis. Otherwise, groups wishing to add complexity to the NEPA analysis will continue to use speculation about ‘reasonably foreseeable future actions’ to cloud the cumulative impacts analysis discussion.

Group 9 (Studies)

The PNSAA supports R.9.1 and R.9.3, particularly if the end result is the identification and elimination of duplicative processes. The value of R.9.2 is debatable. In the context of ski area-related NEPA, without question, federal agencies are understaffed and ill trained. Interdisciplinary teams do not have training necessary to guide complex NEPA processes. Rather than spend resources – financial and human – on quantifying an outcome that is widely known, it would be significantly more beneficial to marshal the available resources to train, and cross-train, NEPA practitioners. In short, a poorly trained workforce has the potential to undermine the intentions of all nine groups of draft recommendations discussed in the paragraphs above.

Additional Recommendation

The PNSAA would support an amendment to NEPA that clarifies that projects conducted under CEs are not subject to administrative appeals. Last fall, ski area projects (on NFS land) that were subjects of CEs were suspended at the last minute due a federal district court order (associated with Earth Island Institute v. Ruthenbeck.) The court invalidated the Forest Service’s regulations, which allow certain projects to be exempt from notice and comment and appeal processes, on the basis they violate the Appeals Reform Act. Congressmen Richard Pombo (R-CA) and Bob Goodlatte (R-VA) have drafted, and introduced, legislation that would address these issues. Please refer to the language of House Resolution 4091 for more detail.

In closing, some small- and medium-size ski areas are not able to pursue facility enhancements because they perceive that they cannot afford, or justify, the costs associated with today’s NEPA process. At Crystal Mountain (in Washington), it cost the ski area \$750,000.00 to produce a MDP. (After more than two years of planning, the MDP was accepted in October 1998.) Almost three years later – August 2001 – the USDA Forest Service released a draft environmental impact statement, which cost the ski area operator \$2,500,000.00 to produce. The final environmental impact statement and record of decision was released in August 2004, after an additional \$1,600,000.00 investment on the part of the ski area operator. After

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investing nearly \$5,000,000.00, and foregoing nine summers of possible project implementation, the costs of many of the MDP-related projects have increased substantially, negatively impacting the timeliness of implementation of Crystal Mountain's now approved MDP.

I appreciate this opportunity to share the Association's views on NEPA reformation. If I can clarify any of my remarks, do not hesitate to contact me directly at 541.386.9600.

Best regards,

PACIFIC NORTHWEST SKI AREAS ASSOCIATION

Scott Kaden
President

cc: Congresswoman Cathy McMorris, Congressman Greg Walden, Linda Goodman, Kimberly Bown, Marti Marshall, and Michael Heilman